

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

FILED
JUL 07 2011
SECRETARY, BOARD OF
OIL, GAS & MINING

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IN THE MATTER OF FORMAL	:	DIVISION'S REQUEST TO
RULEMAKING TO AMEND THE	:	COMMENCE FORMAL
MINERALS REGULATORY PROGRAM	:	RULEMAKING
R647 RULES RESULTING FROM SB 282	:	
AND SB 15 FROM 2011 LEGISLATURE	:	DOCKET NO. 2011-014
		CAUSE NO. RMNRL-2011-02

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The Division of Oil, Gas & Mining ("Division") hereby requests that the Board of Oil, Gas & Mining ("Board") commence formal rulemaking to amend certain of the rules in the Minerals Regulatory Program (Utah Admin. Code R647) as a result of passage of SB 282 and SB 15 during the 2011 General Session of the Legislature.

The Division hereby requests that the Board at its hearing on August 24, 2011 take formal action pursuant to the Utah Administrative Rulemaking Act (Utah Code §§ 63G-3-101 through 702(2011)) to: (1) file the proposed rule amendments attached to this Request in accordance with the requirements of that Act; (2) schedule a public hearing; allowing for comments and an opportunity for hearing; and (3) after consideration of all comments, take further action as appropriate to formally amend R647-1-106: Definitions, R647-2: Exploration, R647-3: Small Mining Operations, and R647-4: Large Mining Operations as the Board finds proper and appropriate.

BACKGROUND

The Division has recommended that the rules pertaining to the Minerals Regulatory Program be amended to address statutory changes resulting from the 2011 Legislature. SB 282, Small Mining Operations, and SB 15, Surety Requirements for Mining, passed the Legislature, were signed by the Governor, and both directly impact the Minerals Regulatory Program of the

Division. The proposed amendments would modify the definition of small mining operations to ten or less surface acres in an unincorporated area of a county or five or less surface acres in an incorporated area of a county, as a result of SB 282. The proposed amendments also add a requirement for the Board to annually establish a figure representing the average cost of reclamation per acre after a presentation by the Division and an opportunity for public comment, as a result of SB 15. Rules pertaining to the amended small mining operations definition are also included in the proposed rule amendments.

The Division commenced an informal rulemaking process with a letter to the Board dated May 11, 2011 and a briefing to the Board on May 25, 2011 on the proposed amendments of the Minerals Regulatory Program rules on this subject. The Division subsequently issued a letter dated May 26, 2011 to the Informal Rules Review Group seeking comments on the proposed rule changes by June 20, 2011. One comment was received which was in support of the proposed amendments.

The informal rulemaking process concluded on June 22, 2011 with a public briefing before the Board. The Division provided a summary of the actions taken and the comments received. No parties spoke in opposition to the proposed amendments at the briefings on May 25, 2011 and June 22, 2011.

The proposed rule amendments are attached, dated June 23, 2011. If the Board decides to commence formal rulemaking, the proposed repeal will be filed with the Division of Administrative Rules via an eRules filing. Provided the eRules filing can be completed by September 1, 2011 as expected, the proposed rule amendments will appear in the Utah State Bulletin on September 15, 2011. The Board may take public comment at a Board hearing on the proposed amendments after publication in the Utah State Bulletin. A public hearing may be held as part of the regularly scheduled Board hearing on September 28, 2011.

A minimum 30-day comment period extending through October 17, 2011 is required by the Utah Administrative Rulemaking Act. Assuming no change to the plan for rule amendment,

the Board could grant its final approval at the regular hearing day on October 26, 2011. The changes could be made effective on the day of the October Board Hearing, since it would meet the requirement of no fewer than seven calendar days after the close of the public comment period.

REQUESTED ACTION

The Division requests that the Board commence the formal amendment of R647-1-106, R647-2, R647-3, and R647-4: order the Division to file the proposed rule amendments with the Division of Administrative Rules; set a date for a public hearing, allowing the necessary time for public comment and consideration of comments; and based upon comments received and other considerations as it finds appropriate take necessary action to formally adopt the rule amendments as shown on the attached exhibit and such additional action as it may find appropriate.

DATED this 7th day of June, 2011.



Steve Alder,
Assistant Attorney General
For Utah Division of Oil, Gas, & Mining.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing DIVISION'S REQUEST TO COMMENCE FORMAL RULEMAKING for Docket No. 2011-014, Cause No. RMNRL-2011-02 to be mailed with postage prepaid, this ~~11th~~ day of July, 2011, to the following:

Michael S. Johnson
Assistant Attorneys General
Utah Board of Oil, Gas & Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
Via Email

Todd Bingham
Utah Mining Association
136 South Main Suite 709
Salt Lake City, UT 84101

Handwritten signature of Julie Ann Carter in cursive script.

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Minerals Program: SB282 and SB15
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R647-1. Minerals Regulatory Program.

R647-1-106. Definitions.

...
"Disturbed Area" means the surface land disturbed by mining operations. The disturbed area for small mining operations shall not exceed five acres in an incorporated area of a county or ten acres in an unincorporated area of a county. The disturbed area for large mining operations shall not exceed the acreage described in the approved notice of intention.

...
"Large Mining Operations" means mining operations which have a disturbed area of more than five surface acres at any time in an incorporated area of a county or more than ten surface acres at any time in an unincorporated area of a county.

...
"Small Mining Operations" means mining operations which have a disturbed area of five or less surface acres at any time in an incorporated area of a county or ten or less surface acres at any time in an unincorporated area of a county.
...

R647-2. Exploration.

R647-2-111. Surety.

1. After receiving notification that the notice of intention is approved or complete, but prior to commencement of operations, the operator must post a reclamation surety with the Division.

1.11. Failure to furnish and maintain reclamation surety may, after notice and opportunity for a Board hearing, result in a withdrawal of the notice of intention as provided for in Section 40-8-16.

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Division is held by other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements may be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on:

3.11. Site-specific calculations or estimates by the Division reflecting the cost the Division or a third party would incur to reclaim the site;

3.12. Site-specific calculations or estimates by the operator reflecting the cost the Division or a third party would incur to reclaim the site, if accurate and verifiable by the Division; or

3.13. The average dollars per acre costs for reclamation for similar operations, as determined by the Division, based upon approved surety amounts for current large mining operations.

3.14. In determining or verifying the amount of surety under [Sections]Subsections 3.11 or 3.12, the Division shall use cost data from current sureties for large mining operations, adjusted as necessary to reflect the nature and scope of operations and reclamation under the notice of intention.

3.15. For the average dollars per acre in Subsection 3.13, the Board will annually approve the figure after a formal presentation from the Division and an opportunity for public comment.

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4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the reclamation surety must be approved by the Division. Acceptable forms may include:

...

R647-3. Small Mining Operations.

R647-3-111. Surety.

1. After receiving notification that the notice of intention is complete, but prior to commencement of operations, the operator must post a reclamation surety with the Division.

1.11. Failure to furnish and maintain reclamation surety may, after notice and opportunity for Board hearing, result in a withdrawal of the notice of intention as provided for in Section 40-8-16.

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Division is held by other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements may be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on:

3.11. Site-specific calculations or estimates by the Division reflecting the cost the Division or a third party would incur to reclaim the site;

3.12. Site-specific calculations or estimates by the operator reflecting the cost the Division or a third party would incur to reclaim the site, if accurate and verifiable by the Division; or

3.13. The average dollars per acre costs for reclamation of similar operations, as determined by the Division, based upon approved surety amounts for current large mining operations.

3.14. In determining or verifying the amount of surety under ~~[Sections]~~Subsections 3.11 or 3.12, the Division shall use cost data from current sureties for large mining operations, adjusted as necessary to reflect the nature and scope of operations and reclamation under the notice of intention.

3.15. For the average dollars per acre in Subsection 3.13, the Board will annually approve the figure after a formal presentation from the Division and an opportunity for public comment.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Division, except as provided in subpart 4.16. Acceptable forms may include:

...

R647-3-114. Mine Enlargement.

Before enlarging a small mining operation beyond five ~~[(5)]~~ acres of surface disturbance in an incorporated area of a county or ten acres in an unincorporated area of a county, the operator must file a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) and receive Division approval.

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R647-3-115. Revisions.

1. Small mining operators are required to submit a revision to the complete notice of intention when a significant change(s) in the small mining operation occurs. A revision can be made by submitting a revised FORM MR-SMO (or similar form) and indicating the portion(s) of the operation which is being revised.

2. Division approval of a revision of small mining operations is not required but the operational change may not be implemented until the Division determines that the revised NOI is complete.

3. In the event the Division or the operator determine at the time a revision is submitted that the amount of the current surety does not accurately reflect the potential cost to complete reclamation at any point in time during the revised small mining operations, the Division may undertake a recalculation of the surety amount as provided in R647-3-111.3. If the recalculated amount is greater than the amount of the existing surety, the revised operations may not be implemented until a revised surety is approved by the Division.

4. If the acreage within an approved small mining operation is later annexed into an incorporated area of a county, the permit may continue as a small mining operation. If the operator of such small mining operation subsequently proposes an increase of the disturbed acres, the current definitions for small or large mining operations would apply as appropriate.

R647-4. Large Mining Operations.

R647-4-118. Revisions.

1. In order to revise a notice of intention, an operator shall file a Notice of Intention to Revise Large Mining Operations (FORM MR-REV). This notice of intention will include all information concerning the revision that would have been required in the original notice of intention.

2. A Notice of Intention to Revise Large Mining Operations (FORM MR-REV) will be processed and considered for approval by the Division in the same manner as an original notice of intention. The operator will be authorized and bound by the requirements of the existing approved notice until the revision is acted upon and any revised surety requirements are satisfied. Those portions of the approved notice of intention not subject to the revision will not be subject to review under this provision.

3. Large mining operations which have a disturbed area of five ~~[(5)]~~ acres or less in an incorporated area of a county or ten acres or less in an unincorporated area of a county may refile as a small mining operation. Reclaimed areas must meet full bond release requirements before they can be excluded from the disturbed acreage.